

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 383 of 1991

with

SPECIAL CIVIL APPLICATION No. 384 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.M. KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NAGARBHAI GOVINDBHAI PATEL SINCE DECEASED THROUGH HEIRS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 383 of 1991

MR MK VAKHARIA for Petitioners

MS JOSHI AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

2. Special Civil Application No. 384 of 1991

MR MK VAKHARIA for Petitioners

MS JOSHI AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

COMMON JUDGEMENT

In these petitions filed under Article 227 of the Constitution, the petitioners who are husband and wife, claiming to be agriculturists have brought under challenge the judgment and order dated October 10, 1990/November 20, 1990 [Annexure-D] passed by the Additional Chief Secretary, Revenue Department [Appeals], Gujarat State, Ahmedabad by which, the Order dated December 28, 1989 [Annexure-C] made by the Collector, Surat in RTS Appeals Nos. 112 & 122 of 1989 is confirmed.

2. By the order dated December 28, 1989, the Collector, Surat had confirmed the order dated April 28, 1989 [Annexure-B] passed by the Assistant Collector, Vyara in Revision Application No. 23 of 1988. By the order dated April 28, 1989 passed by the Assistant Collector, Vyara, the mutation entry nos. 443 and 499 dated September 12, 1975 and January 8, 1980 respectively made in respect of the lands situated at Miyanpur, Taluka Mahua in favour of the petitioners came to be cancelled.

3. It is the case of petitioners that their ancestors were agriculturists and they were holding agricultural land at their native place at village Siyadla, Taluka-Valod, District-Surat as well as at village Titava of Taluka Valod, and therefore, both the petitioners had inherited the said ancestral lands to the extent of about 4 Acres. That, out of the said inherited land, they had sold part of the land for which they had not received full consideration. It is the case of the petitioner that they had not received full consideration. It is the case of the petitioners that they have permanently shifted from their native place and had purchased agricultural land at village Miyanpur by a registered sale deeds executed in the years 1975 & 1979 respectively from one Naginbhai Nathubhai and on the basis of the aforesaid Sale Deeds, possession of the agricultural land was taken by them and in revenue records necessary mutation entries in the name of petitioners at Sr. No. 443 and 499 have been effected and duly approved by the Collector.

3.1 However, after a period of about 10 years from the date of purchase of the land, the Assistant Collector, Vyara had issued show cause notices to both the petitioners dated January 11, 1989 calling upon the

petitioners to show cause as to why the aforesaid mutation entries should not be deleted/cancelled since the sale in favour of the petitioner was effected in violation of the provisions of the Bombay Tenancy & Agricultural Lands Act ['the Act' for short]. In pursuance to the said show cause notices, the petitioners appear before the Assistant Collector, Vyara and pointed out that there was no irregularity as they are holding the land since 1980, and that no proceedings can be initiated after elapse of about 10 years. In spite of the aforesaid facts, the Assistant Collector, Vyara by his order dated April 28, 1989 held that the sale of land in favour of the petitioners was not in accordance with the provisions of Section 2 (2) and 2 (6) of the Act, and therefore, violative of provisions contained under Section 63 of the said Act. The Assistant Collector, Vyara, therefore, directed deletion of mutation entries nos. 443 and 499 made on September 12, 1975 and January 8, 1980 respectively.

3.2 Feeling aggrieved and dissatisfied with the said order, the petitioners preferred appeals, being RTS Appeal No. 112/1989 and RTS Appeal No. 122/1989 before the Collector, Surat. However, the District Collector, Surat turned down these appeals vide his Order dated December 28, 1989.

3.3 Against the order dated December 28, 1989, the petitioners preferred Revision Application before the State Government. After hearing the petitioners, the Additional Chief Secretary [Appeals], Gujarat State, Ahmedabad was pleased to dismiss the applications vide his order dated October 10, 1990/November 20, 1990; giving rise to the present writ petitions under Article 227 of the Constitution.

4. Mr. Mehul Vakharia, learned advocate for the petitioners vehemently argued that the proceedings initiated by the Assistant Collector, Vyara are belated inasmuch as the same have been initiated after more than 10 years from the date of purchase of the land. Mr. Vakharia submitted that on this ground alone, the orders impugned are liable to be quashed and set-aside. Beside this, learned advocate has drawn my attention to the fact that by virtue of section 4 of the Bombay Tenancy & Agricultural Lands [Gujarat Amendment] Amending Ordinance, 2000 [Gujarat Ordinance No. 5 of 2000], such proceedings are required to be abated. By the said amendment proceedings initiated under section 84-C stands abated. Under the circumstances, Mr. Vakharia, learned advocate requested to allow these applications by

quashing and setting aside the impugned orders made by the authorities below.

5. Ms. Joshi, learned AGP has contested the matters on the ground that there is no time limit prescribed under the Statute in respect of exercising of powers under Section 63 of the Act; read with Rule 36. However, she concedes that so far as the latest Gujarat Ordinance No. 5 of 2000 effected in the Act is concerned, by virtue of section 4, such proceedings are required to be abetted since both the petitioners were in possession of the land at the relevant time. Therefore, necessary order with regard to abatement of proceedings may be passed.

6. I have considered the submissions advanced by learned counsel appearing for the respective parties and the documents forming part of the petitions. It is an undisputed fact that the proceedings in question have been initiated by the Assistant Collector, Vyara after the lapse of about 10 years. It is equally true that Section 84-C of the Act does not prescribe any time-limit for initiation of the proceedings, but, in view of the settled position of law by several judgments of this Court as well as Hon'ble Supreme Court that wherever a power is vested in a statutory authority without prescribing any time limit, such power should be exercised within a reasonable time and if such proceedings are not taken up within a reasonable period, the same are liable to be quashed and set-aside. I am fortified in my above view on the basis of the judgement rendered by the Supreme Court in Mohamad Kavi Mohamad Amin v. Fatmabhai Ibrahim, (1997) 6 SCC 71. Before the Apex Court, reliance was placed on a judgement rendered by this Court in State of Gujarat v. Jethmal Bhagwandas Shah [Special Civil Application No. 2770/1979 decided on 1-3-1990]. It is unequivocally held by Supreme Court that where no time limit is prescribed for exercise of a power under a statute, it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time and if it is not exercised within a reasonable time, the proceedings are required to be quashed.

7. In light of the aforesaid clear verdict of the Supreme Court, I am of the view that the proceedings initiated after 10 years cannot be said to have been taken up within a reasonable time, and therefore, the same are required to be quashed and set-aside.

8. Besides, by virtue of Section 4 of the Bombay

Tenancy & Agricultural Lands [Gujarat Amendment] Amending Ordinance, 2000 issued under Gujarat Ordinance No. 5 of 2000, all proceedings relating to any order made or purported to be made under section 84C of the Act for contravention of provisions of section 63, so far as it relates to the breach of clause (6) of section 2 of the principal Act, pending before any court, tribunal or other authority or any such proceedings initiated by any such authority on or after the commencement of the amending Act shall stand abated notwithstanding anything contained in section 84C of the principal Act.

9. In view of the aforesaid provisions also, proceedings initiated against the petitioners are required to be quashed. Thus, on overall view of the matter, I am satisfied that the impugned orders are required to be quashed and set-aside by allowing these writ petitions.

10. For the foregoing reasons, these petition succeed and are accordingly allowed. The impugned orders at Annexures B,C & D respectively; passed by the Assistant Collector, Vyara, confirmed by Collector, Surat and affirmed by Additional Chief Secretary, Revenue Department [Appeals], Gujarat State, Ahmedabad are hereby quashed and set-aside. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

[A.M Kapadia, J.]

Prakash*